

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARCELLUS GILREATH,

Plaintiff,

VS.

PAMELA MCGUINEA, et al.

Defendants.

CASE NO.:

JUDGE:

NOTICE OF REMOVAL

Defendants Cuyahoga County, Ohio seeks removal of this action pursuant to 28 U.S.C. § 1441 *et seq.* and state as follows:

1. On March 27, 2023, Plaintiff Marcellus Gilreath commenced a civil action against the Defendants in the Cuyahoga County Court of Common Pleas, Case No. CV 23-977128. A copy of the Complaint is attached as Exhibit 1.

2. Plaintiff alleges that the County and Defendant violated various rights arising under the United State Constitution and federal statutory law. See, generally: Claim 1 of Complaint (Malicious Prosecution, 42 U.S.C. § 1983); Claim 2 (Abuse of Process, 42 U.S.C. § 1983);; and Claim 3 (*Brady* violation, 42 U.S.C. § 1983).

3. Each of the claims enumerated in the preceding paragraph “aris(es) under the Constitution, law or treaties of the United States” within the meaning of 28 U.S.C. § 1331.

4. This Court possesses original jurisdiction over the federal claims in this civil action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). The remaining state-law claims are joined to this single action and are removable, at minimum, pursuant to 28 U.S.C. § 1441(c). In the alternative, this Court possesses supplemental jurisdiction over some of Plaintiff’s state-law claims pursuant to 28 U.S.C. § 1337.

5. From the face of the state-court docket, Co-Defendant Pamela McGuinea has yet been served with process. Moreover, Ms. McGuinea is a former employee of Defendant Cuyahoga County. Plaintiff has directed the state-court clerk to serve Ms. McGuinea at her former place of employment. Such service does not comply with Fed.R.Civ.P. 4 or Ohio law concerning service of process.

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of the Cuyahoga County’s receipt of the Summons and Complaint.

7. In accordance with 28 U.S.C. § 1446(d), Defendants will give notice to the Cuyahoga County Court of Common Pleas of this Court’s jurisdiction over the state court’s case number CV-23-977128, promptly after filing this Notice of Removal. In accordance with 28 U.S.C. § 1446(d), Defendants will provide prompt written notice to Plaintiff of the filing of this Notice of Removal.

8. In accordance with 28 U.S.C. § 1446(a), the following documents from the state court are attached as exhibits to this Notice of Removal:

Exhibit 1: Plaintiff’s Complaint;

Exhibit 2: “Motion for an Order Correcting Docket Entry”;

- Exhibit 3: Summons issued to Pamela McGuinea;
- Exhibit 4: Summons issued to Cuyahoga County;
- Exhibit 5: Return of Service of Cuyahoga County;
- Exhibit 6: Cuyahoga County docket entries as of April 7, 2023.

Defendants respectfully request that this Notice effect the removal of the above-captioned case to this Court.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting Attorney
of Cuyahoga County, Ohio

By: /s/ Michael J. Stewart

Michael J. Stewart (0082257)
mjstewart@prosecutor.cuyahogacounty.us
(216) 443-6673

Jake A. Elliott (0093521)
jelliott@prosecutor.cuyahogacounty.us
(216) 443-5756

CUYAHOGA COUNTY PROSECUTOR'S OFFICE
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, OH 44113
Fax: (216) 443-7602

Attorneys for Defendant Cuyahoga County

CERTIFICATE OF SERVICE

I certify that on April 7, 2023, a copy of the foregoing *Notice of Removal* was filed with the Court's electronic filing system, and that I caused the foregoing *Notice of Removal* to be served via email to the following:

Brian Bardwell
Brian.bardwell@speech.law

Attorney for Plaintiff Marcellus Gilreath

/s/ Michael J. Stewart
Michael J. Stewart (0082257)